No. 17,050

IN THE

United States Court of Appeals

For the Ninth Circuit

BAY COUNTIES TITLE GUARANTY CO.
(formerly Bay Counties Escrow Co.),
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITIONER'S OPENING BRIEF.

PEART, BARATY & HASSARD,
JOSEPH S. ROGERS,
111 Sutter Street,
San Francisco 4, California,
KENNETH S. CAREY,
220 Bush Street,
San Francisco 4, California,
Attorneys for Petitioner.

Subject Index

Table of Authorities Cited

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STATEMENT OF JURISDICTION.

Petitioner, BAY COUNTIES TITLE GUARANTY COMPANY, a California corporation, hereby petitions the Honorable United States Court of Appeals for the Ninth Circuit to review the decision of the Tax Court, Docket No. 63623, 34 T. C. #3.

This petition for review is filed pursuant to the provisions of Sections 7482 and 7483 of the Internal Revenue Code of 1954. Petitioner filed its federal income tax returns for the calendar years in question with the District Director of Internal Revenue, San Francisco. Jurisdiction is vested in the United States Court of Appeals for the

Ninth Circuit pursuant to Section 7482(b)(1) of the Internal Revenue Code of 1954.

STATEMENT OF THE CASE.

Petitioner is a California corporation which was incorporated July 3, 1946 and commenced business operations in September of 1946. Its principal place of business is San Francisco, California. Petitioner keeps its books and reports its income for federal income tax purposes on an accrual basis. The expenditures in question were cash disbursements (Tr. p. 26).

Petitioner is an underwritten title company as defined in Section 12402 of the Insurance Code of the State of California (Tr. p. 26). As such company it performs all services in connection with the transfer of real property. Its underwriter is Pacific Coast Title Insurance Company of Los Angeles, who has as a co-insurer Louisville Title Insurance Company of Louisville, Kentucky (Tr. p. 26). Petitioner performs the services usually performed by title insurance companies in the State of California; that is, it conducts examinations and searches of titles; it issues title insurance policies; it performs as an escrow company, supervising the closing of transactions involving transfers of real property (Tr. p. 26-7). Fees for its services are required by law to be filed with the office of the Insurance Commissioner of the State of California.

When petitioner commenced business in 1946, it set about to accumulate a title plant; that is, a series of records which reflect all transactions affecting title to real property in the City and County of San Francisco. As

of December 31, 1951, petitioner had established a typical title plant (Tr. p. 112 to p. 116). Petitioner's plant included tract maps of all of the real estate in the City and County of San Francisco by lot and block (petitioner uses the Assessor's lot and block system as the foundation for its plant). The lot books covered every lot in the City and County of San Francisco. In addition, petitioner had a set of general indices, tax assessor's reports back to 1938, a complete set of Edward's Abstracts back to 1908 (Edward's Abstracts contains daily reports of all recordings affecting titles to real property such as transfers, bankruptcies, probate proceedings, litigation, etc.). Petitioner's title plant had been acquired and accumulated during the years 1947 to 1951 (Tr. pp. 27-28). A typical title plant is augmented daily in the ordinary course of business (Tr. p. 112). A great multitude of transactions occur every day in a city the size of San Francisco which affect the title to real property. Such transactions include divorce, bankruptcies, litigation, deaths, transfers of title to property, assessment of taxes, filing of federal tax liens, as well as judgments of various kinds. Petitioner, as part of its daily routine, acquires copies of all recorded and filed transactions and documents affecting title to real property (Tr. p. 112).

As hereinabove stated, petitioner's real property plant is founded on the system used by the County Tax Assessor. All items of information concerning the title to real property are segregated to the various indices referring to the parcels affected. In addition to the basic data accumulated by petitioner in the years 1947 to 1951 and daily since then, petitioner uses the records of the City and County,

United States District Court and other relevant records as a basis for carrying on business (Tr. p. 112). For all practical purposes, as of December 31, 1951, petitioner's title plant contained records of every parcel of real property in the City and County of San Francisco for which records existed (Tr. p. 112-3). Also, its records showed every recorded transaction affecting real property in the City and County of San Francisco for a period in excess of five (5) years (Tr. p. 112-4). At the end of 1951, the book value of petitioner's plant was $25,000.00. Its capital, consisting of common stock, was 2,500 shares of stock, having a total par value of $25,000.00.

When petitioner began business in 1946 it had four employees. In 1952 it had 34 employees, including 13 title search people, two examiners and three in the general indices section (Tr. p. 118).

There is no statutory requirement relating to the method or means by which those engaged in writing title insurance shall assure themselves of the correctness of the record state of the title; however, it is customary for title companies to search the record state of the title through all relevant records (Tr. p. 29-30). In making such title search, it is common to make use of any relevant item of information tending to show the current state of the title. Such information when possible, includes title reports and insurance policies previously prepared on the premises or old title reports or insurance policies issued by another company. The use made of (i. e. the weight given to) preliminary reports or insurance policies of other companies depends upon the estimate of the title examiner of the validity of the conclusions reached in said

report or policies. All title insurance companies use existing preliminary reports as an additional source of title information. Such practice in many cases eliminates the necessity of examining the title prior to the date of the preliminary report (Tr. p. 120-1).

In San Francisco there are four old and well-established title companies which issue policies of title insurance—the California Pacific Title Insurance Company (now a division of Title Insurance & Trust Company of Los Angeles), Western Title Insurance and Guaranty Company, Northern Counties Title Insurance Company, and City Title Insurance Company (Tr. p. 30). Among them, there is an understanding and arrangement for the reciprocal exchange of information concerning real estate titles which each has in its files (Tr. p. 30-1). Thus, one company making a search of title to a piece of real estate with respect to which another previously had made an examination may make use of the existing report made by the other company, as a starter, or as additional title information (Tr. p. 30-1).

The petitioner is not admitted to participation in the reciprocal exchange arrangements of the four above named title companies. The petitioner and Pacific Coast Title compete with the above companies (Tr. p. 31).

Petitioner has followed the practice since it began business of obtaining copies of preliminary ("starter") reports and of old title policies from real estate concerns, real estate brokers, lending institutions, and others. It followed that practice before and during the taxable years. It has made payments for them or sometimes it has obtained them free of charge (Tr. p. 31).

Several real estate brokers in the San Francisco area have frequently furnished the petitioner with copies, from their files, of preliminary reports and of title policies on various pieces of real estate involved in transactions which they have handled in the past and in which transactions the petitioner did not participate, for which they have received cash payments from the petitioner. Often copies of such reports or old title policies on a particular piece of property have been furnished upon request of petitioner, and at times petitioner has made use of them in its current search on a particular property. At other times, petitioner has put copies of preliminary reports or of old title policies in its files to serve as a starter in a future search (Tr. p. 32), in order to reduce the expense incurred in preparing a "starter" search.

In most instances, real estate brokers do not charge any stated fee or exact amount for furnishing a copy of a preliminary report or old title policy to the petitioner, and petitioner has followed the practice of making payments periodically to real estate brokers of amounts which it determined represented the value of the information furnished. Such payments, at times, have been made monthly and they have been in varying amounts ranging from $25, $60, $90, $100, or more (Tr. p. 33).

In 1952, as an example, petitioner had an arrangement with one real estate firm in San Francisco whereby it could look through its files and locate copies of preliminary reports or old title policies which it obtained at no cost. In another instance, a real estate broker having his own business regularly provided petitioner with

copies of preliminary reports or old title policies from his files and he periodically received lump sum payments from petitioner for such general accommodation but not for individual copies of report or policies. Such payments always were made in cash (Tr. p. 33).

During the taxable years, petitioner made cash payments to real estate brokers in the total amounts set forth below:

Year	Amount
1952	$6,896
1953	8,581
1954	7,534

The following schedule shows the amounts of such cash payments by months:

Month	1952	1953	1954
Jan.	$ 386	$ 736	$ -0-
Feb.	505	521	556
Mar.	484	532	467
Apr.	482	729	812
May	503	651	470
June	575	644	480
July	579	687	645
Aug.	671	715	674
Sept.	530	778	589
Oct.	661	704	693
Nov.	804	768	700
Dec.	716	1116	1448
	$6896	$8581	$7534

(Tr. p. 34)

The names of the real estate brokers and the payments received by them in 1952, 1953 and 1954 were not reflected in the books and records of petitioner, but were in a personal record belonging to petitioner's president, Rolls. The payments to the real estate brokers were made by Rolls personally in cash. Checks of the petitioner were made payable to cash and cash was made available in this way to make payments to real estate brokers. The accounting records showed the cash withdrawals, and the amounts of the payments to real estate brokers were charged on the books to an expense account such as advertising expense (Tr. p. 34-5). Such method was suggested by a Revenue Agent named J. Kewman upon examining petitioner's records in 1952 (Tr. p. 151).

Neither the petitioner nor its president, Rolls, maintained any record at any time, including the taxable years, showing the specific preliminary title reports or copies of old title policies on particular pieces of real estate which the petitioner had purchased during a year from any real estate broker or any other source (Tr. p. 35-6). Petitioner did not keep an exact record of how many preliminary reports or old title policies on various pieces of real estate it had purchased in each of the taxable years (Tr. p. 36).

Petitioner had a system for filing the copies of preliminary title reports and old title policies on various pieces of property so as to make such information easily and readily available at any time for daily use.

During the years 1952-54, petitioner acquired many preliminary title reports or copies of old title policies; it paid for some of these documents; and it filed all of those

acquired in its plant records (Tr. p. 37). The bulk of the preliminary title reports and title policies which petitioner purchased during the taxable years did not relate to any particular searches and examinations of titles which it made in the taxable years for the issuance of title insurance policies (Tr. p. 36-8). However, such information had to be available at all times for use in its daily operations.

Prior to 1952, petitioner capitalized in its accounting records all payments for preliminary title reports, all old title policies and all other expenses with respect to salaries and costs related to title searchers and daily expense of plant maintenance (Tr. p. 184-5). However, this capitalization was made with the full realization that these expenditures were deductible. Taxpayer had business reasons for not taking the allowable deductions for income tax purposes (Tr. p. 183-4). Petitioner, for the first time, in 1952, 1953 and 1954 charged all payments for such preliminary title reports, old title policies and all other expenses related to title searchers and daily expense of plant maintenance to current operating expenses and took deductions therefor in its income tax returns at the suggestion of Revenue Agent Kewman and because it had accomplished its business reasons for capitalizing such expenses. Respondent disallowed the entire amounts of the deductions for the purchase of preliminary reports and old title policies, $6,896 in 1952, $8,581 in 1953, and $7,534 in 1954 (Tr. p. 19).

It was less expensive for petitioner to purchase these reports than it would have been to pay the wages and

salaries necessary to have it own employees provide this information (Tr. p. 187-8). Such wages and salaries unquestionably would have been deductible.

STATEMENT OF QUESTION.

Reduced to its lowest terms, the question presented to this Court is:

Is the cost of acquiring additional information concerning the status of title to real property, which information is in the form of title insurance policies and/or preliminary title reports of other companies, an ordinary and necessary business expense deductible under section 23(a)(1)(A) of the Internal Revenue Code of 1939 and Section 162 of the Internal Revenue Code of 1954, or is such cost a non-deductible capital expenditure?

The error complained of is the opinion and decision of the Tax Court (Tr. pp. 24-46) holding such cost to be a non-deductible capital expenditure.

SUMMARY OF ARGUMENT.

Petitioner contends:

I. That the cost of such reports is an ordinary and necessary business expense deductible under Section 23(a)(1)(A) of the Internal Revenue Code of 1939 and Section 162 of the Internal Revenue Code of 1954.

(A) The Tax Court erred in determining that the old preliminary title reports and old title policies constituted additions and betterments to appellant's title plant, and

the expenditure for them was a non-deductible capital expense.

(B) The Tax Court erred in determining that the expenditures were not current maintenance expenses within the category of ordinary and necessary business expenses.

II. The information obtained from such reports is information currently used to maintain petitioner's title plant in an up to date running order.

(A) The Tax Court erred in determining that the preliminary title reports and old title policies purchased by the appellant in each taxable year had a useful life beyond the year of purchase which extended until such years as appellant might make use of them in its own up-to-date title abstracts relating to the same pieces of property in connection with future transactions dealing with them.

(B) The Tax Court erred in determining that the future time of use in appellant's business was problematic and indefinite depending upon when, as and if the appellant might be called upon to make abstracts of title to the same pieces of property.

I. THE EXPENDITURES WERE ORDINARY AND NECESSARY IN PURSUANCE OF PETITIONER'S BUSINESS.

Section 23(a)(1) of the Internal Revenue Code of 1939 and Section 162 of the Internal Revenue Code of 1954 provide that there shall be allowed as deductions all "Ordinary and necessary expenses incurred or paid during the taxable year in carrying on a . . . business . . ."

It has never been claimed that the expenditures in question had no connection with petitioner's business. Nor in the face of the record could such a claim be made. It was stipulated that the expenditures in question were actually "paid" during the taxable years in question. Therefore, if the expenditures were "ordinary and necessary" they fell within the statutory definition and are deductible.

An expense is said to be ordinary if a "hard-headed businessman would have incurred it under like circumstances." (Mertens, Federal Income Tax, Ch. 25, P. 25). This is best illustrated by the Supreme Court's characterization of payments made reflecting an industrywide practice as being "ordinary." (*Lilly v. Commissioner,* 343 U. S. 90).

Regulations 111, Sec. 29.23(a)-15 in part provides: "Expenses to be deductible under Section 23(a)(2) must be 'ordinary and necessary'; which presupposes that they must be reasonable in amount and must bear a reasonable and proximate relation to . . ." the business of the taxpayer. In the case at bar it is uncontradicted that *all* title insurance companies and title companies procure other companies, starters whenever possible. If they do not have a reciprocal exchange agreement, such as that between the so-called big four in San Francisco, they purchase or obtain starters from whatever source available.

The big four in the City and County of San Francisco, to wit: California Pacific Title Insurance Company, City Title Insurance Company, Western Title Insurance and Guaranty Company and Northern Counties Title In-

surance Company, have a reciprocal arrangement whereby title information in all forms is exchanged between said four companies.

The purchase of title reports and/or title insurance policies is a matter of sound business economy, practice and efficiency on the part of petitioner and all other companies and actually decreases the cost of operation. Petitioner, in order to carry out its business purpose, must be able at any time to furnish a report of the state of the title of *any* parcel of real property in the City and County of San Francisco. As a matter of practical competition this report must be available within a short time; must be accurate, and it must be prepared at a reasonable cost. To fulfill these goals, petitioner must maintain title information that will permit of efficient service at a reasonable cost. Title insurance companies could issue insurance policies based upon the record title on any given day without any further search. However, the risk of loss attendant upon such a practice has persuaded those in the industry that it is wise to make certain that the record title is without cloud or to except from the policy of insurance those clouds which appear upon a search of the record. In the City and County of San Francisco, this could mean a search back to the time of the fire in 1906. Such a search would be extremely expensive. For that reason, any practice which can cut down the length of time required to make a search necessarily cuts down the cost of determining the status of title. The big four title insurance companies in the City and County of San Francisco have obtained a considerable competitive advantage with their reciprocal arrangement for the ex-

change of title information, plus a letter of indemnity upon which each might rely. In order to be able to compete, it is necessary that petitioner and all title companies similarly situated purchase or obtain preliminary reports or title insurance policies which provide the purchaser with a fund of title information similar to that which the big four derive from the reciprocal exchange agreement.

Most title information is subject to interpretation and evaluation. No title plant is therefore ever "complete" or "perfect" or "current." Elements involving human errors or omissions affect the current status of a plant in its daily operations. If title companies have in their possession or available to them title reports from other companies which may contain a diversity of opinions, they can evaluate all of the information including the diverse opinions and render their own opinion and issue their own report.

An expenditure is said to be "necessary" when it is appropriate or helpful to provide the desired result.

Mr. Chief Justice Marshall in *McCulloch v. Maryland* (1819) 4 Wheat., 316 at 413 said:

> "If reference be had to its use . . . we find that it frequently imparts to more than that one thing is convenient or useful or essential to another. To employ the means necessary to an end is generally understood as employing any means calculated to produce the end."

In *Welch v. Helvering* (1933) 290 U. S. 111, Mr. Justice Cardozo, construing "necessary" as it is used in the Code, said:

"We may assume that the payments . . . were necessary for the development of the petitioner's business, at least in the sense that they were appropriate and helpful . . . (petitioner) certainly thought they were, and *we should be slow to override his judgment.*" (emphasis added)

A. The Tax Court erred in determining that the preliminary title reports and old title policies purchased by the appellant in each of the taxable years in question had a useful life beyond the year of purchase which extended until such years as appellant might make use of them in its own up-to-date title abstracts relating to the same pieces of property in connection with future transactions dealing with them.

O. D. 1018, 5 C.B. 119 (1921) provides:

"Title abstract companies incur relatively large and continuous expenditures in keeping their plants up to date, such as the expense of adding and inincorporating in the plant records that are being made daily in the various courts and in the Recorder's office.

"These records which are added to and incorporated in the plant for the purpose of keeping it in up to date running order and preventing depreciation are in the nature of ordinary and necessary repairs. The expenses, therefore, incurred in making such records are current expenses, and as such are deductible for the year in which incurred and paid or accrued.

"Since a title plant is not an asset of a nature which gradually approaches a point where its usefulness is exhausted, but is an asset of a more or less permanent character, it is not a proper subject of a depreciation allowance."

Petitioner's Exhibits 2 and 3 before the Tax Court illustrate the use of these starters in the typical transaction. If in either of these matters there had been no starter the searcher would have had to go back in the records to either the date of the filing of a subdivision map or to 1906 (Tr. p. 121-2). Petitioner's records show that in a significant number of cases petitioner used starters as illustrated in petitioner's Exhibits 2 and 3.

The starters are incorporated in petitioner's title plant in the same manner as the daily filings in the County Recorder or County Clerk's office, thus keeping the plant in an up to date running order. This fund of title information is readily available to petitioner whenever a customer desires a preliminary report.

Whenever title is searched to a given date and evaluated, the title plant insofar as it affects that parcel of real property prior to that date is of no further value. Use of a starter therefore has the effect of replacing all title information prior to its date. Any increase in value occasioned by use of the report is offset by the decrease in value and replacement of prior information.

These starters are substantially the same as the title information available daily in all governmental offices. As pointed out in O. D. 1018, supra, expenditures for these items of information have been recognized by the Commissioner of Internal Revenue since 1921 as being ordinary and necessary and hence deductible expenditures. Like the daily recordings and filings in the various government offices, petitioner might not use some of these preliminary reports and title insurance policies for several years but in order to be efficient and to be able at any

time to determine the state of title of any parcel of real property in the City and County of San Francisco within a short period of time and at a reasonable cost, it is necessary for petitioner to obtain title information wherever and whenever it can. These preliminary reports and/or insurance policies are simply title information upon which petitioner in part bases its opinion of title. They are no more additions to petitioner's title plant than are the daily recordings or filings in the various government offices.

Petitioner could obtain starter reports by the more expensive method of hiring title searchers to prepare these reports. It has never been contended by respondent, nor is it contended in this case, that the expense of a title searcher is to be regarded as a capital expense. The function of these title reports and policies is much the same as that of the title searcher. If one expenditure is to be regarded as a deductible expense, so also must the other. It is highly relevant to this issue that petitioner has utilized the least expensive method taxwise and otherwise.

A recent example of the materiality of this fact is shown in *General Motors Corporation v. The United States* in the United States Court of Claims (60-2 USTC, paragraph 9762). In that case General Motors had contested a dividend privilege tax levied by the State of Wisconsin. In 1940 the Supreme Court of the United States held the tax statute constitutional. Thereafter, General Motors accrued on its books the taxes due the State of Wisconsin. Notwithstanding the fact that the statute levied the tax on the stockholders, not the corporation, it was conceded that the cost of allocating the tax to the individual share-

holders on a quarterly basis would have cost the corporation more than the tax did. The corporation argued that it should be permitted to deduct the tax under §23(a). In response to that argument, the Court of Claims said:

> "It was economically wise for the plaintiff to absorb the cost of this tax rather than to pay several times the amount of the tax to get it computed and recorded accurately for each shareholder. See *Baltimore Steam Packet Co. v. United States,* ..... C.C. ....., 180 Fed. Supp. 347 (decided January 20, 1960) [60-1 USTC, paragraph 9231]; *Canton Cotton Mills v. United States,* 119 C.C. 24, 94 Fed. Supp. 561 (1951) [51-1 USTC, paragraph 9131]. It may be observed that if the plaintiff had undergone the expense of subtracting the tax from the shareholders' dividends that expense would have been a 'ordinary and necessary' and therefore deductible expense and the Federal government would have borne a larger share of it because it would have reduced the plaintiff's income and excess profits taxes." (60-2 USTC, page 78,130)

II. THE INFORMATION OBTAINED FROM SUCH REPORTS IS INFORMATION CURRENTLY USED TO MAINTAIN PETITIONER'S TITLE PLANT IN AN UP TO DATE RUNNING ORDER.

A. **The Tax Court erred in determining that the preliminary title reports and old title policies purchased by the appellant in each taxable year had a useful life beyond the year of purchase which extended until such years as appellant might make use of them in its own up-to-date title abstracts relating to the same pieces of property in connection with future transactions dealing with them.**

While it is true that some of the reports purchased in the years in question were not used in evaluating a particular title the year of purchase, it is not true that petitioner was purchasing an asset having a useful life in excess of one year. The reports are immediately incorporated in the plant for immediate use.

The starters are incorporated in petitioner's title plant in the same manner as the daily filings and recordations in the County Recorder and County Clerk's office. The fund of title information is immediately available to petitioner whenever a customer desires a preliminary report.

Further, even conceding *arguendo* that these assets had a useful life in excess of one year or that they would be used in future years does not negate their deductibility. There are many analogous situations wherein such expenditures are held deductible. For example—advertising is a deductible expense even though its value is not confined to the years of expenditure. Thus, in *Consolidated Apparel Co.* (1952) 17 T. C. 1570, taxpayer, on the accrual basis, pledged $7,500.00 to a merchant's association for advertising. One-half of this was paid by tax-

payer in 1946 and he sought to deduct the sum paid even though the advertising was to be done over a period of five years.

The Commissioner disallowed a portion of the deduction on the ground that the expenditure should be capitalized and deducted pro-rata over the life of the advertising contract. The Tax Court in rejecting the Commissioner's contention said:

> "There is no statutory requirement or authorization for such an allocation. Reasonable costs of advertising are generally allowed as business expenses. They are deductible under Section 23(a) in the year when paid, or if the taxpayer reports an accrual basis, in the year when the liability is incurred. Petitioner made its return on an accrual basis. It accrued in its books and deducted in its 1946 return . . . the amount paid in that year. That amount at least was properly accrued and deducted as an expense of that year. Section 43, Internal Revenue Code, to which respondent refers in his brief, *does not authorize the spreading of depreciation deductions in respect of the cost of advertising or the acquisition of any non-taxable capital asset.*" (Emphasis added)

In *E. H. Sheldon & Company,* 19 T. C. 481, taxpayer designed, manufactured and installed laboratory equipment. Periodically it issued a catalogue which was intended to be a reference book of information on available equipment. These catalogues were used in practically every sale made by taxpayer's salesmen, but no sales were made by use of the catalogue alone. The estimated useful life of the catalogue was five years. The taxpayer contended that the expense of the catalogue was a current expense.

Commissioner contended it was a capital expense to be amortized over the useful life. The Tax Court held for the Commissioner, notwithstanding petitioner contended that it was an expense because "the exact period of usefulness . . . is not determinable and their value to petitioner did not diminish with use."

On appeal to the Sixth Circuit the decision of the Tax Court was reversed (214 F. 2d 655 (1954)). Analogizing this case to the payment of advertising, the Court of Appeals said:

> "The fact that an expenditure produces something that has a useful life extending beyond the taxable year is clearly not the controlling test." (45 A.F.T.R. 659). Citing *Collingwood,* 20 T.C. 937; *Perkins Bros. v. Commissioner,* 78 Fed. 2d 152; *New Pittsburgh Coal Company v. Commissioner,* 200 F. 2d 146.
>
> Further, "the rule also appears well settled that such an expense cannot be capitalized by the taxpayer in the absence of evidence showing with reasonable certainty the benefits resulting in later years from the expenditure."

So also in this case the exact period of usefulness is not determinable.

In *Collingwood,* 20 TC 937 (1953) the taxpayer terraced farm lands. This was done between crops, a few portions of the land at a time. Notwithstanding the useful life of these terraces extended beyond the year of construction, the Tax Court held that these were deductible as expenses.

Not only petitioner, but all title companies, will be placed in an anomalous position if this Honorable Court

affirms the judgment of the Tax Court. On the one hand the costs of acquiring such title information will not be deductible as an ordinary and necessary business expense. On the other hand, O. D. 1018, supra, has long been held by the Commissioner to bar deduction of such items by way of an allowance for depreciation. Thus, this business cost which is held to be neither fish nor fowl becomes a non-recoverable capital cost.

From what has been stated above in this brief, it is patent that:

B. The Tax Court erred in determining that the future time of use in appellant's business was problematic and indefinite depending upon when, as and if the appellant might be called upon to make abstracts of title to the same pieces of property.

This holding of the Tax Court is demonstrably spurious. It is obvious that the reports or policies are not the sole source of title information. Those reports must be continuously augmented by obtaining the daily record from all governmental records and filings. Without such augmentation which keeps a title plant in up-to-date running order, the reports or policies would be valueless. Suppose that an industrial plant maintained its own fire fighting or police organization. Would the cost of maintaining such organizations be non-deductible simply because the taxpayer could not show that it had a fire or a security problem in the taxable year?

CONCLUSION.

The expenditures in question, like those of advertising, maintaining safety organizations, etc. is one required by petitioner's business. Petitioner could no more afford as a matter of generally accepted business practice to be without an adequate title plant than a mercantile business without advertising or any business without protection from loss by fire or theft. The test is not actual use of these starters in the years in question, but whether in such years these were ordinary and necessary in the operation of taxpayer's business in maintaining its title plant in up-to-date running order. From the foregoing, it is patent that the decision of the Tax Court should be reversed.

Dated, San Francisco, California,
December 14, 1960.

Respectfully submitted,
PEART, BARATY & HASSARD,
By JOSEPH S. ROGERS,
JOSEPH S. ROGERS,
KENNETH S. CAREY,
Attorneys for Petitioner.